71-1468

Supreme Court, U. S.
FILED
MAY 10 1972
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT of the UNITED STATES
January Term 1972

No. _____

Kenneth T. Bosley, et.ux.,
Petitioners

vs.

The Grand Lodge of Ancient Free
and Accepted Masons of Maryland
(a Maryland Corporation)

PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS
OF MARYLAND

Kenneth T. Bosley
et.ux.
Sparks, Md. 21152

Lewis C. Merryman
Of Counsel

IN THE SUPREME COURT OF THE UNITED STATES

No.

KENNETH T. BOSLEY, et ux.
Petitioners

Versus

GRAND LODGE OF ANCIENT FREE AND ACCEPTED MASONS (A MARYLAND CORPORATION)
Respondent

MOTION FOR LEAVE TO FILE THE PETITION FOR THE WRIT OF CERTIORARI, 28 U S C, Sec 1651 (a)

Rule 31

Procedures on Application for Extraordinary Writs

1. The Petitioners move the Honorable Court for leaves to file the Petition for the Writ of Certiorari and as reasons therefore set forth in condensed form the following matters and facts:

a. That the Petitioners seek by the Writ of Certiorari to have the Supreme Court review the judgment of the Court of Appeals of Maryland in a proceeding at law under the Common Law in Ejectment instituted on August 2, 1966, in the Circuit Court for Baltimore County, Maryland, by Grand Lodge of Ancient Free and Accepted Masons,

a Maryland Corporation, as the Plaintiff, now Respondent, and Kenneth T. Bosley and Phyllis B. Bosley, his wife, Defendants, now Petitioners, terminating on June 9, 1970, in a Judgment on the Verdict made absolute for the Plaintiff.

b. Appeal to the Court of Appeals of Maryland was filed by the Defendants, now Petitioners, on June 22, 1970 rendering judgment for the Plaintiff - Respondent - affirmed on November 11, 1971. Motion for Reargument was filed on December 10, 1971 and denied on December 13, 1971.

Wherefore the Petitioners respectfully pray that on the basis of the aforegoing matters and facts, the Petitioners are hereby granted leave to file the following petition.

Lewis C. Merryman
Attorney for Petitioners
214 Washington Avenue
Towson, Maryland 21204

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2. Nebraska vs. Missouri, 196 U.S. 23 49 L.ed. 372, 25 Sup. Ct. 155 10;48

3. Oklahoma vs. Texas 268 U.S. 252, 256, 69 L.ed. 937, 45 S. Ct. 497 10

4. Causey vs. Gray, 250 Md. 380, 243 A2d572 (1968) 49

5. Bone vs. May (Iowa), 225 N.W. 367 11

6. Hammond vs. Ridgley, Lessee, 5 Harrison & Johnson 245 12;35

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8. Fisher vs. Boyce 81 Md. 52 16

9. Tiffany on Real Property, Sec. 99 36

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1. 2W. Blackstone, Commentaries 262 48

2. Gould on Waters, Sec. 156 (2d Ed. 1891) 49

3. C.J.S. 93, Waters, Section 76 & 79

4. C.J.S. Boundaries, Section 119 11

5. Poe, Pleading and Practice, Vol. 1 p. 683 16

IN THE SUPREME COURT OF THE UNITED STATES

January Term 1972

No. _____

Kenneth T. Bosley, et ux.,
Petitioners

v.

The Grand Lodge of Ancient Free and Accepted Masons of Maryland
(A Maryland Corporation)

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

Petitioners pray that a writ of certiorari issue to review the judgement of the Court of Appeals of Maryland, entered in the above case on November 20, 1971. Petition for reargument was denied December 13, 1972.

The Opinions and orders of the Courts below are as follows:

1. Opinion of the Court of Appeal, filed November 20, 1971.
2. Judgement of the Circuit Court of Baltimore County.
3. Stipulation and Order of the United States District Court for the District Of Maryland, January 27, 1966.

JURISDICTION

The judgement of the Court of Appeals was entered on November 20, 1971, and the petition for reargument was denied on December 13.1971. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1651(a).

STATEMENT OF FACTS RELATING TO

DEFENDANTS-APPELLANTS' CLAIM

PRETENSIONS

The Bosleys' claim of title and right to possession of the 36 acres of land and water area in dispute that is also claimed by the Grand Lodge:

(1) is found in a fee simple deed of conveyance for 36 acres of land now located in the Eighth Election District of Baltimore County, Maryland, and also located on and includes the bed of a large stream or river known as Western Run and extending along the Southeasterly, Southerly, and Southwesterly water course of said Run and was conveyed by Elizabeth Webster to Thomas H. Matthews (Quaker operator of a Grist flour mill in that section of Baltimore County that was settled by Hickite Quakers) (Thomas Hopkins Matthews) by deed dated November 11, 1850 and recorded among the Land Records of Baltimore County in Liber H.M.F. No. 17, Folio 35. The said grantee being the great grandfather of Kenneth Thomas Bosley, one of the petitioners herein. The consideration cited in the deed was $5,000. [1]

(2) is founded in a deed of conveyance of the aforesaid land, water and water course of Western Run which was conveyed by Thomas O. Matthews, Grantor, to Anna M. (Thomas Oliver Matthews) by deed February 5, 1890, and recorded among the Land Records aforesaid in Liber J.W.S. 178, Folio 385, and being the same parcel of land, premises and water courses previously conveyed by the aforesaid first deed as cited above. The said grantee being the grandfather of Kenneth Thomas Bosley, one of the petitioners herein; and the said grantee also conveyed a right of way to the Maryland Gas Transmission Corporation across any part of

[1] See the Plat in the center-fold, Prepared by O.L. Spink, Surveyor

36 acres by deed dated September 27, 1930, and recorded among the Land Records in Liber 868, Folio 152.

(3) is founded in a deed of conveyance of the aforesaid land, water and water course of Western Run which was conveyed by Thomas O. Matthews, Grantor, to Anna M. Bosley (Anna Matthews Bosley) and her husband Daniel W. Bosley (Daniel Webster Bosley) by deed dated September 6, 1940, and recorded among the Land Records aforesaid in Liber C.W.B. No. 1114, Folio 502.

The deed was conveyed for a bona fide consideration of $2,000.00. The said grantee, Anna M. Bosley, being the mother of one of the petitioners herein.

(4) is founded in a deed of conveyance of the aforesaid land, water and watercourse of Western Run which was conveyed by Anna M. Bosley and her husband by deed, dated October 27, 1959, and recorded among the Land Records aforesaid in Liber 3616, Folio 196.

The above aforesaid four deeds of fee simple conveyance transferred a continuous chain of Title from November 11, 1850, until October 27, 1959. Defendants-Appellants assert their claim and pretensions and possession of the aforesaid land and Western Run water course and their possession thereunder to the present date, being a period of approximately 120 years.

The Western Run is approximately 50 feet wide measuring its water flow. The banks are approximately 10 feet high and clearly visible. The distance from top bank to top bank on opposite sides is approximately 100 feet.

The Defendants-Appellants and their predecessors in title have paid taxes on the 36 acres of land for the entire 120 years. The property was established for a grist mill and in 1850 Hall's mill was joined with the 36 acres which later became known as the Thornton's Mill. The milling operations ceased during this century.

The petitioners' immediate predecessor in title, Anna M. Bosley, rented the lands during the period 1943 through 1948. Timber was sold off the disputed parcel in 1959 by the Bosleys. Cultivation for ensilage corn has also taken place on part of the dispute parcel being planted by the Bosleys, who are also farmers, since 1959. Approximately 4 acres of corn has been planted each year beginning in 1959. During 1964 the Bosleys also had ditching work done on the disputed parcel which was supervised and paid, in part, by the Soil Conservation Service of the USDA. Prior to the Bosleys farming, part of the area ground was wild, jungle type and growing scrub trees, bushes, massive honey suckle and briars. One section of the property is fenced with old time wire.

The petitioners claim the entire disputed parcel by title and possession, which is defined by a water course boundary, the Western Run and said claim and pretension was well documented in Civil Case No. 16736, in the United States District Court for the District of Maryland. In this case the Bosleys intervened when another pipe line company, Atlantic Seaboard Corporation, was in condemnation to take part of their lands also claimed by the Grand Lodge of Ancient Free and Accepted Masons of Maryland. This Federal case was heard by Judge Roszel C. Thomsen, in January 1966. Then nine months later, in August 1966, this action in ejectment by the Grand Lodge was brought against the Bosleys, the petitioners herein.

A STIPULATION by all parties is filed in the case of Atlantic Seaboard Corporation to Grand Lodge of Maryland (same as The Grand Lodge of Ancient Free and Accepted Masons) and Kenneth T . Bosley and Phyllis B. Bosley in the District Court of the District of Maryland. The stipulation was that "the Southernmost bank, a water course, is the common boundary." That is in part the exact words of the Stipulation

duly executed by all the parties.

In this action the Bosleys claim the property bounds on one side by the Thornton Mill Road and bounds on the south by the Western Run River. The monuments and boundaries in the Federal case, which Judge Thomsen was the judge, is the same as in this proceeding.

The procedure in ejectment is an ancient proceeding in Maryland relating back to more than 200 years to the Laws of England.

Dorsey, Action of Ejectment in Maryland 1841, p.45, p54 and 55. Also McHenry, John, The Ejectment Law of Maryland 1822, p.55. These authorities each state that instructions on the rules of surveying relating to couses and distance, calls for elder and junior surveys and Meander Lines shall be given.

This petitioner has the elder tract, the Thornton Mill. The Grand Lodge has the junior tract that was surveyed in 1927 by J. Spence Howard. Dorsey on p.54 states:

> "Where the line of a junior tract, calls to run to an elder tract, you must stop where you reach the elder tract though short of your distance...."

Dorsey also says that, "The courses and distances are to be sacrificed, if necessary, to call for natural or artificial boundries; and no parol evidence can be admitted to contradict this, p.55.

This petitioner not only has the elder tract but also the natural boundry to the Western Run River.

QUESTION PRESENTED

Petitioners, residents of Baltimore County, Maryland, live about 4 miles from their vacant, unimproved, wooded 36 acre tract of land that the Grand Lodge of Ancient Free and Accepted Masons of Maryland seeks to eject them from 3.4 acres of that tract. The Grand Lodge owns 420 acres more or less bound on the North and Northeast by a 50 to 100 foot River known as Western Run. The common boundary between the two acres of land has been the natural boundary of the Western Run for over 120 years.

In an effort to improve the quantity and quality of land and subsequent improved access to the 420 acre tract, the Grand Lodge claims a sudden, violent flood changed the course of the Western Run which would add the legal title of the cut off portion to their title. The lower court and the Court of Appeals of Maryland have completely disregarded the superiority of the natural boundaries of the Bosley property and they have been denied their rights of due process of law pertaining to their defense in the ancient proceeding of ejectment.

The question presented is that title to land in the Eastern section of the United States follows what laws of avulsion? The additional question presented is whether or not the petitioners have been denied their rights of due process of law when the members of the Grand Lodge are acting in many conflicts of interests capacities as judicial officers of the Court during the Lower Court proceeding.

STATUTES INVOLVED

1. Maryland Statute, Article 91, Surveyor and State Survey

Section 1, Execution and Return of Warrant
Section 5, Chain and Pole Carriers, Oath
Section 7, Witnesses
Section 8, Courses and Distances Inserted in the Certificate of Survey
Section 10, Notice before Execution of Warrant of Resurvey
Section 15, Direction and Oath of Surveyors
Section 18, When and How Boundaries Are To Be Mentioned

2. Maryland Rules of Procedure 1958 - Rule T40
   Rule T41(c) Power of Surveyor
   Rule T42 Defenses (b) Plea of Not Guilty
   Rule T44 Warrant of Resurvey

3. Acts of 1877 - Boundary of Maryland and Virginia along the Potomac River

4. Maryland Statute Article 19A, Section 1 Article 19A, Section 2 and e

5. Common Law of Maryland found in:

   A. Dorsey, Action of Ejectment in Maryland, dated 1841, p. 45, 54, and 55

   B. McHenry, John, The Ejectment Law of Maryland, 1822, p. 55

6. Act of Admission of Iowa to the Union - 1846

7. Continental Congress Ordinance of May 20, 1785 (Thomas Jefferson, Committee Chairman)

8. Act of Congress, March 1, 1800, Public Lands Surveys

CASES INVOLVED

1. Colley vs. Golden, 117 Mo. 33, 23 S.W. 100, 21 L.R.A. 300

2. Nebraska vs. Iowa, 143 U.S. 359, 36L.Ed. 186, 12 S. Ct. 396 (1892)

3. Nebraska vs. Missouri, 196 U.S. 23, 49 L.ed. 372, 25 Sup. Ct. 155

4. Oklahoma vs. Texas, 268 U.S. 252, 256, 69 L.ed. 937, 45 Sup. Ct. 497

5. Causey vs. Gray, 250 Md. 380, 243A2d572 (1968)

6. Bone vs. May (Iowa), 225 N.W. 367

7. Hammond vs. Ridgley, Lessee, 5 Harrison & Johnson 245

TEXTS REFERENCED

1. 2W. Blackstone, Commentaries 262

2. Gould on Waters, Section 156 (2nd Ed. 1891)

3. C. J. S. 93, Waters, Section 76 and 79

4. C. J. S. Boundaries, Section 119

REASONS FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO ASSURE THAT AN ACT OF CONGRESS DESIGNED FOR TWENTY-NINE STATES (MOSTLY MIDWESTERN) IS NOT APPLIED TO THE ENGLISH COMMON LAW SURVEY SYSTEM OF THE EASTERN UNITED STATES.

CERTIORARI SHOULD ALSO BE GRANTED TO ASSURE THAT THE PETITIONERS WILL NOT BE DENIED DUE PROCESS OF LAW IN THIS EJECTMENT PROCEEDING.

This case presents two fundamental questions which were presented to the Court of Appeals of Maryland and decided against the petitioners without merit:

Previous decisions of this Supreme Court have established that in the differentiation between accretion and avulsion have been:

(1) Due regard must be given to the speed of the accretion as well as to the rapidity of the tearing down of the river bank; and

(2) That there must be conclusive evidence that the earth forming the new bank originated in the bank torn down.

The testimony also developed that the only area that was depressed on the Bosley property was by the banks of a small stream flowing in the Western Run at the edge of the parcel in dispute. This area was bulldozed, in part, by the construction of a natural gas line of 20 inch diameter in 1930 by the Maryland Gas Transmission. However, the area is flat and is from 9 to 13 feet in elevation above the bed of the Western Run. The area that was alledged by the Grand Lodge to have filled in would have

the footage of 1300 feet more or less in length, approximately 50 feet wide and an average of 10 feet in depth. A total of 650,000 cubic yards.

The Grand Lodge produced no geologist or soil expert or identified any date that a flood could have taken place but instead prepared their own members to produce the desired testimony.

Therefore the Court failed to apply the law of accretions, if there was a change of the Western Run that could be detected. Since the petitioners deed contained the elder survey in 1850 by meander lines of the Western Run the judgement must be reversed. The Bosley deed description begins in the center of York Turnpike Road where the same intersects is the south side of the Western Run at the south end of the bridge as now erected and then runs in a northwesterly direction along Thornton Mill Road and then calls "to the Southernmost bank of Western Run, thence running with and bounding on the meanders of the south and the southwest side of the said Run to the beginning. (HMF 17-35 - Webster to Matthews - Appendix A) Therefore this is the true common boundry and this Honorable Court should grant the writ.

The natural currents of a river, even when meandering at a temporary level, render impossible the satisfaction of the section requirement and confine the rule concerning avulsion to situations where a stream leaves its old bed and creates a new one, as occurred on the Missouri in the vicinity of Island Precinct on July 5, 1867. Cited in Oklahoma vs. Texas 268 U.S. 252, 256, 69L. ed. 937, 45 Sup. Ct. 497. In December 1904 this Supreme Court held that under these circumstances that state boundary followed the center line of the old channel as it was before the avulsion. Nebraska vs. Missouri 196 U.S. 23, 49L. ed. 372,

25 Sup. Ct. 155.

The presumption is always in favor of accretions as against avulsion. Bone vs. May (Iowa) 255 N.W. 367.

In the case at bar the Grand Lodge patterned their case by having their expert witness, Mr. Cassell, a surveyor, and also a member of the Grand Lodge, to testify that the change in the Western Run was occasioned by a violent cut. The Grand Lodge also primed the County Surveyor, Mr. Ulrich, who is also a subcontractor for another Grand Lodge member, Dollenberg, that the Western Run changed its course by a "violent cut through it","not too much distance, they could violently cut through here. This is possible. Another opinion I thought about as long as you're asking for an opinion.

The Bosleys produced three aged witnesses who were neighbors in the area of Western Run and they testified that they never heard of a stream change or that the Grand Lodge ever intended to claim any property north of the Western Run. These witnesses were Mr. Tawney, Mr. McCartha and Mr. Cedrone.

The Court of Appeal of Maryland should not have followed the Roman method of grid system of surveying that is utilized in the midwestern states. The Maryland law, based on the English common law follows the natural boundaries and metes and bounds system, but giving the highest dignity to the natural monuments. U.S. vs. Gallas 1967, 269 F Supp 141.

The lower Court's instructions for an alledged changing of Western Run by avulsion was incorrect and the authorities like C.J.S. Boundaries, Section 119 state, "Instruction in action to determine boundaries must be correct, consistent, complete and not misleading or confusing".

The trial courts instruction also omitted that where one enters in possession of land by

claiming title by deed, his possession by law will be deemed to be coexistent with the boundary stated in his deed. Hammond vs. Ridgley Lessee, 5 Harrison & Johnson 245.

The Bosleys in this case have held the disputed 3.4 acre tract, which is a part of their 36 acres, and their predecessors in a continuous claim of title and possession for a period of 120 years. Additionally, taxes have been paid by these parties and these petitioners for those 120 years.

CONCLUSION

WHEREFORE, for the aforegoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

Kenneth T. Bosley, M.A.,
Juris Doctor

and

Phyllis B. Bosley, M.A.
Sparks, Maryland 21152

Petitioners

Lewis C. Merryman
Of Counsel

ADDITIONAL REASONS FOR THE WRIT :

Certiorari should also be granted to assure that the petitioners will not be denied due process of law in this ejectment proceeding.

1. The burden of proof in this ejectment case was upon the Grand Lodge to conduct the proceeding according to the rules of practice and procedure.

In this case the plaintiffs discovered, after the Lower Court trial was over, that the Court Reporter, Mr. Underwood, was an active member of the Grand Lodge. This fact was raised in the Motion for Judgement N. O. V. or in the alternative motion for a new trial. The trial court was quite perterbed because the Court Reporter was his own appointee. Subsequently on appeal to the Maryland Court of Appeal five extensions of time for transmittal of the records were required because the Court Reporter did not have time to transcribe the testimony. Approximately a year later the Court Reporter transcribed and typed the record.

It is impossible to know exactly where the record could have been altered or errors made but the testimony does not flow properly in many areas. In addition the full beginning point of the Bosley description has been left out. For example, "Beginning for the same in the center of the York Turnpike where the same intersects the South Side of Western Run at the South end of the Bridge as now erected over said run." The testimony as transcribed merely states "beginning down at the bridge of York Road, went across Western Run..." conveys the idea of metes and bound beginning from an established marker rather than from a superior natural monument as was correctly read from the deed in the Lower Court.

This case at bar, being in Ejectment, the declaration being insufficient in law; the special plea of the Bosleys res adjudicata being a valid plea, but denied, the warrant of re-

survey having been granted but not completed and the proceeding thereunder being inconsistent; and the rules of resurvey having not been complied with the various motions for final disposition of the case should have been granted and allowed.

In addition to all the above a proper objection was entered in the Lower Court motion for a new trial that the plaintiff attorney, John Hessey, Sr., struck his appearance on the day of the trial and then testified as the main witness for the plaintiff by using notes that were prepared in his own law office and secretly placed in the corporation minutes which he has custody of. Under deposition previously when the Grand Master, Mr. Penn, did not appear, Mr. Hessey testified for him stating he had "only one or two papers" that the defendant Bosley had given him. Since the defendants, Bosleys, claim the papers prepared by Mr. Hessey, who is over 80 years old, do not reflect the proper details, it is clear that the defendant's right to discover was abridged. When objected to at the trial in the Lower Court, motions were overruled.

Subsequently, it has been discovered that Mr. Hessey, the main witness, is Chairman of the Board of a Baltimore Hospital. Also on the Board is the Chief Judge of the Court of Appeal of Maryland who sat on this case. Mr. Hessey's son is also a member of the Board of this Baltimore Hospital.

The judge who wrote the opinion in the Maryland Court of Appeals for many years has had close working relationships with Mr. Hessey in the field of legal education.

When the plaintiff corporation has had its members prepare an improper deed; has had its members guarantee the title; has had its members secretly prepare Board of Trustee minutes

that are incorrect; have had its member act as attorney for the corporation; have had its member act as Court Reporter in the Lower Court trial; have had its member act as a state registered surveyor and regularly employ the County Surveyor, had had employees of its members serve on the jury; and its members were Chief Clerks of the Lower Courts, it is apparent that there has been a denial of due process of law in this case of the Grand Lodge vs. Bosley.

Further, the corporation claimed in the Lower Court trial it was a charitable corporation and supported by 50,000 members in Maryland. However, the institution located on 420 acres only supports about 110 guests who turn over all their possessions to the Grand Lodge. Only a token number are charitable. Therefore when a corporation claims it is charitable, when it is, in fact, not, the defendants did not have a fair trial under due process of law.

The Grand Lodge property being opposite the Hunt Valley Inn, a 13 million dollar establishment, where the Maryland Bar Association met in 1972 and Justice Burger spoke, would increase the value of their property by approximately a million dollars by ejectment of the defendants from their land in this case. As a real estate venture the Grand Lodge started with approximately 260 acres in 1927 has by 4 separate acquisitions increased their land to approximately 420 acres bounding on three sides by highways except to the north the area held by the Bosleys.

The annals of history in America should not reflect another farm family ejected from their land by a large institutionalized corporation.

A FURTHER REASON FOR GRANTING THE WRIT IS THIS ACTION IS RES ADJUDICATA

The special plea of the Bosleys; arises from a case in the United States District Court for the Distrct of Maryland between the Atlantic Seaboard Pipe Line Company, Plaintiff and the Grand Lodge, Defendants. (Civil No. 16736) and Kenneth T. Bosley, et. ux., as Intervenors.[2]

The Federal Court, by Judge Rozel C. Thomsen, ordered that the boundry line between the Grand Lodge and the Bosleys', the Petitioners herein, be stipulated as "the southernmost bank, a water course, as the common boundry"; and the opinion of Judge Thomsen's review and Order pertaining to this boundry would constitute that the issues of the Lower Court ejectment case by the Grand Lodge would be Res Adjudicata.

The special plea filed by the Bosley's is printed in this appendix was denied by the Lower Court. In Poe, Pleading and Practice Volume 1 , Mr. Poe states on page 683, "... it must appear, either by the record or parol proof consistent with it, that the particular matter sought to be concluded was necessarily tried or determined-that is, that the verdict and judgement in the former suit could not have been rendered without deciding that matter. Fisher v. Boyce, 81 Md 52.

See appendix for Judge Thomsen's Order, and the Stipulation between the Grand Lodge and the Bosleys' which was accomphlished 7 months prior to the filing of this ejectment proceeding.

[2] Plat in the center-fold filed in this Federal Case. (Typed labels entered by this petitioner)

APPENDIX A

Extract of Deed in Bosley's Chain of Title
Recorded - HMF 17 Folio 35, etc.
Deed Thos. H. Matthews, November 11, 1850
Elizabeth Webster & Others
Deed to
Thomas H. Matthews

this Indenture, made this eleventh day of November in the year of Our Lord eighteen hundred and fifty, between Elizabeth Webster of the City of Baltimore, State of Maryland, of the first part,* * * * * and Thomas H. Matthews of Baltimore County aforesaid of the sixth part.* * * * * * * * * * and of the Sum of five thousand dollars to the said party of the third part hereto in hand paid respectively by the Said party of the Sixth part hereto at and before the Sealing and delivery of these presents the receipt whereof is hereby acknowledged, have granted bargained and Sold aliened enfeoffed and conveyed unto the Said Thomas H. Matthews, in fee. All that piece or parcel of Land being a part of the following tracts of land "Greensborough", "Project", "Cole's Chance", "Greens Safeguard", "Hall's Mill", and "Taylor's Discovery" or by whatsoever name or names the Same may be called, Situate lying and being in Baltimore County aforesaid and contained within the metes and bounds courses and distances following that is to say:

Beginning for the Same in the center of the York turnpike road where the Same intersects the South Side of Western Run at the South end of the Bridge as now erected over said run, thence running through the center of Said bridge North twenty Seven degrees east five and three tenths perches to North edge of Bridge thence running with and bounding on the centre of the York turnpike road. North twenty two degrees east twenty eight and three tenths perches* * * * * * * * * * on perch line of the land agreed to be Sold by Elbridge G. Hall to Judis Brutus Booth, thence running with and bounding on said land and on the North East Side of the Public Road as now changed and altered the five following courses viz: * * * * *

then leaving said road and running North twenty four and one half degrees west four and a half perches to a Stone marked 3* * * * * to a Stone heretofore planted at the end of Said line marked "G", thence running with and bounding on the given line of Said first described part, South Seven degrees, west twenty perches to the southernmost bank of Western Run, thence running with and bounding on the meanders of the South and South West side of Said Run to the beginning:

Containing thirty six acres of Land more or less, together with all and Singulars the buildings thereon erected and the rights privileges, ways, waters, water courses and appurtenances thereunto belonging and particularly the right to and use of the water power of the Said Western Run belonging to the Said parties of the first, Second, third, and fourth parts hereto or either of them above the present bridge over Said Stream where it crosses the York turnpike road, and including the right to improve Said water power by the erection of a dam or dams so as to employ the whole of Said power above Said turnpike Bridge. To have and To hold the Said described property with all the appurtenances and privileges above mentioned unto the Said Thomas H. Matthews his heirs and assigns forever to his and their use and behalf and to and for no other use intent or purpose whatsoever ***** In testimony whereof the Said parties of the first, Second, third, Fourth, fifth and Sixth parts hereto have hereunto Sat their hands and Seals on the day and year first above written.

Signed, Sealed and delivered in the presence of the words "and fifth" being first underlined on the third and sixth pages.

Geo. W. Ritter

Elbridge G. Hall	SEAL	Elizabeth Webster	SEAL
Jms. D. McPherson	SEAL	Isaac Webster	SEAL
Henry Webster	SEAL	Thos. Love	SEAL
Thos. H. Matthews	SEAL	John H.B. Latrobe, Trustee	SEAL

Court Exhibit No. 6

APPENDIX B
EXTRACT OF DEED IN BOSLEYS'
CHAIN OF TITLE
Liber p. 552
Thomas O. Matthews
Right of Way To
Md. Gas Trans Corp-SEpt. 1930

For and in consideration of the sum of Seventy Five Dollars ($75.00) cash in hand paid the receipt of which is hereby acknowledged Thomas O. Matthews Widower do hereby grant unto Maryland Gas Transmission Corporation its successors and assigns (hereinafter collectively called the Grantee) a right of way twenty feet wide for the purpose of laying constructing changing the size of repairing maintaining operating and removing one or morepipe lines for the transmission and supplying of gas together with an appurtenant telephone or telegraph line through certain property owned by the Grantor situate in the Eighth Election District of Baltimore County State of Maryland and the roads and highways within or abutting on the same said property being bounded and described as follows:

On the North by the lands of J.F. Lupo et al.

On the East by the lands of Carroll Benson.

On the South by the lands of Bonnie Blink Masonic Home.

On the West by the lands of Bonnie Blink Masonic Home et al.

S/Thomas O. Matthews
. . . . . 27 day September
1930

APPENDIX C

EXTRACT OF DEED IN BOSLEY'S
CHAIN OF TITLE
Recorded Liber No. 1114, Folio 502
Thos. O. Matthews
Deed to
Anna M. Bosley & Hus
State Tax $2.00
U.S. Stamp $2.20

THIS DEED made this 10th day of August in the year nineteen hundred and forty by and between Thomas O. Matthews widow of Baltimore County and State of Maryland hereinafter referred to as Grantor and Anna M. Bosley and Daniel W. Bosley her husband of the same place hereinafter referred to as Grantees.

* * * * * * *

* * * * * and being in the eighth Election District of Baltimore County aforesaid being the same land and all of the land which by Deed dated February 5th 1890 and recorded among the Land Records of said County in Liber J W S No. 178 folio 385 etc was conveyed by John T. Ensor Trustee to the said Thomas O. Matthews in fee simple.

AND being the same and all the land which was conveyed by the two following deeds One from Elizabeth Webster and others to Thomas H. Matthews dated November 11th 1859 and recorded among the aforesaid Land Records in Liber H M F No. 17 folio 35 etc the other from Thomas L. Hall to said Thomas H. Matthews dated November 12th 1850 and recorded among the aforesaid Land Records in Liber H M F No. 17 folio 41 etc. * * * The land and premises hereby conveyed are fully described in said last two mentioned deeds and reference thereto is hereby made for description.

* * * * * * *

Thomas O. Matthews (SEAL)

Recorded Aug. 16, 1940 at 11:30 AM and exd per C. Willing Browne, Jr., Clerk

---

APPENDIX D
EXTRACT OF BOSLEYS' DEED
Anna M. Bosley
and Webster Bosley
to
Kenneth Thomas Bosley, et al.,

Received for record on October 27, 1959 and recorded among the Land Records of Baltimore County in Liber 3616, page 196.

THIS DEED, Made this 1st day of October in the year one thousand nine hundred and fifty-nine, by and between Anna M. Bosley and Webster Bosley, her husband, both of Baltimore County in the State of Maryland, of the first part, and Kenneth Thomas Bosley and Phyllis Bunker Bosley, his wife, both of Baltimore County, State of Maryland, of the second part.

* * * * * * *

Beginning for the And Being the same and all the land which was conveyed by the three following deeds: One from Elizabeth Webster and others to Thomas H. Matthews, dated November 11th, 1850, and recorded among the aforesaid Land Records in Liber H M F No. 17, folio 35 etc.; the other from Thomas L. Hall to said Thomas H. Matthews dated November 12th, 1850, and recorded among the aforesaid Land Records in Liber H M F No. 17, folio 41, etc; And the subsequent deed from Thomas O. Matthews to Anna M. Bosley and Daniel W. Bosley, her husband, dated August 16, 1940, recorded in CWB Jr., No. 1114 Folio 502 and recorded among the aforesaid Land Records of Baltimore County.

* * * * * * *

/s/ Anna M. Bosley (SEAL)
/s/ Webster Bosley (SEAL)

APPENDIX NO. 1

EXTRACT OF DEED IN GRAND LODGE'S TITLE

ELIZABETH WEBSTER DEED TO EDWARD HYATT,

IN TRUST

Recorded - GHC, No. 36 - Folio 464

1863

THIS DEED, made this twenty-sixth day of February, in the year eighteen hundred and sixty three, by Elizabeth Webster of Baltimore County, State of Maryland, widow, witnesseth that in consideration of nineteen thousand nine hundred and seventy nine 00/100 Dollars in hand paid, the receipt whereof is acknowledged, the said Elizabeth Webster hereby grants and conveys unto Edward Hyatt of Baltimore City, his heirs and assigns, all that part of the following tracts of land, viz "Taylors Discovery" Christophers Lot "Coles Venture", Prospect Coles Addition "Greens Safeguard", or by whatsoever name or names the same or any part thereof may be called, situate in Baltimore County and described as follows, viz:

Beginning for the same at a stone marked "B" heretofore planted at ...

* * * * *

... north 3-1/2 degrees East 104-4/10 perches to the south side of the Western Run, thence running up and bounding on the south side of said Run the sixty following courses, viz: * * * * * south 8° West 181 perches to the place of beginning.

Containing two hundred and sixty-six acres, one road and twenty-two square perches of land, more or less.

Being part of a farm formerly belonging to Jospeh Thornburgh above named, and whereof

he died seized, and which after his death was purchased of his estate by the late John Skinner Webster, and called the Mount Repose Farm; and which upon the death of said Webster, was purchased by his widow, the said Elizabeth Webster, * * * * *

* * * * * * *

Witness my hand and seal.

Elizabeth Webster (SEAL)

Test:

Allen E. Forrester

APPENDIX NO. 2

EXTRACT OF DEED IN GRAND LODGE'S TITLE

Recorded - WPC 338 - Folio 444 - April 5, 1909

WILLIAM H. WIGHT, et al. Trustees

Deed to FREDERICK W. WRIGHT

THIS DEED, made this fifth day of April in the year one thousand nine hundred and nine, between William H. Wight, John H. Wight and Alpheus Wight, Trustees as hereinafter mentioned, of the one part; and Frederick W. Wright, of the other part.

* * * * * * *

* * * * * beginning of the north eighty eight and one quarter degrees east ninety five and three tenths perches line of the land, which by deed dated February 26th, 1863 and recorded among the Land Records of Baltimore County in Liber G.H.C. No. 36, folio 464, etc., was conveyed by Elizabeth Webster to Edward Hyatt, in trust, thence running with and binding on the outlines of said last mentioned land as surveyed in the year 1900, ... east ninety five and three tenths perches, more or less, thence south . . . to the centre of the York Turnpike Road, thence running with and bounding on the centre of said Turnpike Road the three following courses, viz: * * * * * to the south side of the Western Run, thence running up and bounding on the south side of said run and on the outlines of the last named deed, as surveyed in the year 1863, as to the distances, but the courses to correspond to the year 1900, the sixty following courses and distances: * * * * *

Containing three hundred and fifty nine acres of land, more or less, exclusive of seven acres, more or less, which is excepted from the land herein described and to be conveyed, which excluded land consists of lots or parcels

FOLD OUT IS TOO LARGE TO BE FILMED

of land heretofore conveyed as follows:• • • • •

Being the same tracts of land described described in the two following deeds and herein described as one tract, viz:

One deed from Charles McLean and wife to Edward Hyatt, trustee, dated March 20th, 1860 and recorded among the Land Records of Baltimore County in Liber G.H.C. No. 28, folio 387, etc.;

And the other from Elizabeth Webster to said Hyatt, trustee, dated February 26th, 1863 and recorded among the Land Records aforesaid in Liber G.H.C. No. 36, folio 464, etc.;

• • • • •

Witness the hands and seals of the parties hereto of the first part, the day and year first above written:

Test:

(as to Wm. H. Wight & John H. Wight):
Chas. Kreuder, Jr.

WILLIAM H. WIGHT (SEAL)
JOHN H. WIGHT (SEAL)
ALPHEUS WIGHT (SEAL)
Trustees

APPENDIX NO. 3

EXTRACT OF DEED IN GRAND LODGE'S TITLE

Recorded WPC 441, folio 57

Ethan Allen Lycett) This Deed, made this
and wife, et al) 8th day of January in
) the year nineteen hun-
Deed to) dred and fifteen, by
) Ethan Allen Lycett and
Frederick W. Wright) Charlottie Abott Late
Lycett, his wife, of
Baltimore City State of Maryland, and The Corporation For The Relief of The Widows and Children of The Clergy of The Protestant Episcopal Church in Maryland, a body corporate, duly incorporated.

* * * * *

Beginning for the same at a stone planted at the end of the Fourth line . . . . West Seventy-four feet eight inches to the place of beginning. Containing Six-one-hundredths of an acre of land more or less.

* * * * *

And in testimony whereof, the said The Corporation for the Relief of the Widows and Children of the Clergy of the Protestant Episcopal Church in Maryland hath caused its corporate seal to be hereto affixed and Peregrine Wroth its Vice-President to subscribe his name.

Test: Ethan Allen Lycett (Seal)
Charlottie Abott Cate
W. O. Peirson Lycett (Seal)

APPENDIX NO. 4

DEED IN GRAND LODGE'S TITLE

Emma C. Weishettel to John B. Wailes

(Recorded in Liber WPC No. 633, folio 312)

1926

This Deed made this 2nd day of July in the year one thousand nine hundred and twenty six by and between Emma C. Weishettel, widow of Baltimore City, State of Maryland, party of the first part and John B. Wailes of the same place party of the second part.

Witnesseth that in consideration of the sum of five dollars and other valuable considerations this day paid the receipt whereof is hereby acknowledged the said party of the first part doth hereby grant and convey unto the said party of the second part his heirs and assigns in fee simple all those two tracts or parcels of ground situate and lying in the Eighth Election District of Baltimore County, State of Maryland, comprising the farm known as "Bonnie Blink Farm."

* * * * * * *

All that tract or parcel of land conveyed by deed dated the fifth day of April 1909 and recorded among the Land Records of Baltimore County in WPC No. 338 folio 444 etc. from William H. Wight, et al., Trustee to Frederick W. Wright now deceased.

* * * * * * *

The second thereof being all that triangular parcel of land which by deed dated the 8th day of January 1915 and recorded among the Land Records in Liber WPC No. 441 folio 57 etc. was conveyed by Ethan Allan Lycett and wife to the said Frederick W. Wright.

* * * * * * *

Test: Emma C. Weishettel (SEAL)
Adam T. Geyer

APPENDIX NO. 5

EXTRACT

LAND SALE AGREEMENT TO GRAND LODGE

Recorded 1927

John B. Wailes & wf
Agreement with
The Grant Lodge of AF & AM of Maryland

) This agreement made this 17th day of May in the year nineteen hundred and twenty seven by and between John B. Wailes and Anna M. Wailes his wife of the City of Baltimore in the State of Maryland as parties of the first part and The Grand Lodge of Ancient Free and Accepted Masons of Maryland a body corporate duly incorporated under the Laws of the State of Maryland as party of the second part.

Witnesseth That the said John B. Wailes and Anna M. Wailes his wife do hereby sell to the said The Grand Lodge of Ancient Free and Accepted Masons of Maryland a body corporate under the Laws of the State of Maryland the the said The Grand Lodge of Ancient Free and Accepted Masons a body corporate does hereby buy from the said John B. Wailes and Anna M. Wailes his wife all that tract of land lying and being in Baltimore County and known as "Bonnie Blink Farm" containing 266.2 acres more or less bounded in part by the Western Run Road the York Road and Western Run and being all that farm and the improvements thereon now owned by the said John B. Wailes and acquired by him from Mrs. Emma Weiskittel on or about the 3rd day of July 1926 by Deed duly recorded among the Land Records of Baltimore County aforesaid to which Deed reference is made for particular description of said real estate.

At and for the price of Forty Five Thousand ($45,000.00) Dollars and the said John B. Wailes does hereby bargain and sell to the said

The Grand Lodge of Ancient Free and Accepted Masons of Maryland does hereby purchase from the said John B. Wailes all the personal property mentioned and described in an Inventory a copy of which is attached to this agreement and made part hereof at and for the sum of Four Thousand ($4,000.00) Dollars making the combined purchase of real estate and personal property Forty Nine Thousand ($49,000.00) Dollars on account of which purchase price the sum of Forty Five Hundred ($4,500.00) Dollars have been paid at the time of the signing of this Agreement and the balance is to be paid in cash within forty five (45) days from this date (The acreage indicated in crops on the Inventory attached hereto and made part hereof is more or less).

• • • • •

As Witness the hands and seals of the said John B. Wailes and Anna M. Wailes his wife and witness the signature of Warren S. Seipp Most Worshipful Grand Master of the party of the second part this 17th day of May 1927.

Test:

Richard B. Tippett	John B. Wailes (Seal)
As to Mr. and Mrs. Wailes	Anna M. Wailes (Seal)
Walter C. Mylander	Warren S. Seipp (Seal)
As to Most Worshipful Grand Master	Most Worshipful Grand Master

APPENDIX NO. 6

EXTRACT OF DEED IN GRAND LODGE'S TITLE

Recorded WPC-645-333
1927
John B. Wailes & wf
Deed to
Grand Lodge of Ancient
Free and Accepted Masons

This Deed Made this 30th Day of June in the year one thousand nine hundred and twenty seven by and between John B. Wailes and Annie M. Wailes his wife of Baltimore City State of Maryland parties of the first part and The Grand Lodge of Ancient Free and Accepted Masons of Maryland a corporation of the State of Maryland party of the second part.

• • • • • • •

Beginning for the first thereof at a stone now planted on the north side of a private road said stone being in the south eighty six and one quarter degrees west eighty nine and 7/10 (89.7) perches line of the land which by deed dated March 20 1860 and recorded among the Land Records of Baltimore County in Liber G H C No. 28 folio 387 • • • • • and to point at or near the centre of the York Road thence with and bounding on said line and on the centre line of the York Road north five degrees fourteen minutes east three hundred and eighty feet more or less to the south side of Western Run the twenty six following courses and distances • • • • • Containing two hundred and sixty two and 7/10 (262.7) acres of land more or less.

Beginning for the second thereof at a point on the south side of Western Run said point being at the end of the north nine de-

grees thirty three minutes west two hundred and five and 3/10 (205.3) foot line of the tract containing two hundred and sixty two and 7/10 (262.7) acres more or less hereinabove first described • • • • • Containing three and 4/10 (3.4) acres of land more or less.

• • • • • • •

Being the same property which by deed dated July 2, 1926 and recorded among the land records of Baltimore County in Liber WPC No. 633, folio 312 was granted and conveyed by Emma C. Weiskittel widow to John B. Wailes in fee simple • • • • •

APPENDIX AA

ORDER AND STIPULATION - United States District Court

In the United States District Court
for the District of Maryland

Civil No. 16736

Atlantic Seaboard Corporation

v.

The Grand Lodge of Ancient Free and Accepted Masons of Maryland, a Maryland corporation, Owner;
and
Kenneth T. Bosley and
Phyllis Bosley,
Intervenors

STIPULATION

For the purpose of this action it is stipulated between The Grand Lodge of Ancient Free and Accepted Masons of Maryland, a Maryland Corporation, and Kenneth Thomas Bosley and Phyllis Bunker Bosley, his wife, all parties defendant in this action, that the common boundary line between the tract of land in the Eighth Election District of Baltimore County, Maryland, conveyed to said Grand Lodge by John B. Wailes and Annie M. Wailes, his wife, by deed dated June 30, 1927 recorded among the Land Records of said County in Liber W.P.C., No. 645, folio 333, and the tract of land conveyed to said Kenneth Thomas Bosley and Phyllis Bunker Bosley, by Anna M. Bosley and Webster Bosley, her husband, by deed dated October 1, 1959, of record among the Land Records of said County in Liber W.J.R. No. 3616, page 196, is the southwesternmost bank of Western Run, a water course, at the location where the right of way sought to be acquired by plaintiff in this action coincides with the said common boundary line between the aforesaid tract of land of said The Grand Lodge of Ancient Free and

Accepted Masons of Maryland and said tract of land of said Kenneth Thomas Bosley and Phyllis Bunker Bosley, his wife.

It is further stipulated by all the parties to this action that the right of way easement sought to be acquired by the plaintiff in this action does not involve any land belonging to said Kenneth Thomas Bosley and Phyllis Bunker Bosley, his wife, as said ownership is determined by the aforesaid stipulated common boundary line between said tract of land of The Grand Lodge of Ancient Free and Accepted Masons of Maryland and the said tract of land of Kenneth Thomas Bosley and Phyllis Bunker Bosley, his wife.

Atlantic Seaboard Corporation
By Charles C. G. Evans

Herbert M. Bryan
Its Attorneys

John H. Hessey
Walter C. Mylander, Jr.
Attorneys for Defendant,
The Grand Lodge of Ancient
Free and Accepted Masons
of Maryland

Kenneth Thomas Bosley
Phyllis Bunker Bosley

By Kenneth Thomas Bosley,
Her attorney-in-fact.

Dated January 21, 1966

SPECIAL PLEA - RES JUDICATA

The Defendants, KENNETH T. BOSLEY and PHYLLIS BOSLEY, his wife, in proper person, for a plea, say: That, in the case of Atlantic Seaboard Pipeline Company v. Grand Lodge of Maryland and Kenneth T. Bosley and Phyllis Bosley (as Intervenors), the United States District Court for Maryland, during the Spring 1966 Term, ordered that the boundary line between the Grand Lodge of Maryland and the Defendants' property be stipulated as "the southernmost bank, a water course, as the common boundary".

Therefore, Judge Thomson's review and order pertaining to this boundary would constitute that the issues of this Baltimore County Circuit Court case would be res judicata to the Federal Court case, and that this action is conclusive of points and matters determined in this former suit; and, therefore, a motion is made that this proceeding be dismissed with costs to be paid by the Plaintiff.

Kenneth T. Bosley
Phyllis Bosley

ORDER

ORDERED that the Stipulations between the parties hereto, dated January 27, 1966, be made a part of the record in this action. The defendant, Kenneth Thomas Bosley, in proper person, and Phyllis Bunker Bosley, his wife, by Kenneth Thomas Bosley, her attorney-in-fact, moved to be dismissed from this action as parties thereto, with prejudice, which motion was not opposed by any other parties hereto.

ORDERED that Kenneth Thomas Bosley and Phyllis Bunker Bosley, his wife, be dismissed from this action as parties, with prejudice.

/s/
Chief Judge, U. S.
District Court

January 27, 1966

ORDER OF COURT

The above entitled case having come on for hearing on the special plea of Res Judicata filed on behalf of the Defendants, Kenneth T. Bosley and Phyllis B. Bosley, his wife, on October 14, 1966, after hearing counsel and reviewing the Stipulation referred to in said plea, it is this 21st day of November, 1967, by the Circuit Court for Baltimore County ORDERED that said special plea of Res Judicata filed by said Defendants be and the same is hereby denied and leave is granted to the said Defendants to plead to or otherwise answer the Declaration in ejectment within the period of fifteen (15) days from the date of this Order.

Walter M. Jenifer
Judge

EXTRACT OF MOTION FOR JUDGMENT N.O.V. OR, IN THE ALTERNATIVE, MOTION FOR A NEW TRIAL

The defendants, Kenneth T. and Phyllis B. Bosley, for their motion for judgment N.O.V., or in the alternative, a motion for a new trial, herein state:

* * * * *

3. That the plat of the warrant of Resurvey, prepared by Mr. Ulrich, County Surveyor, was not filed in this case until the trial date and incompletely illustrates the defendant's property by not showing the actual lines of enclosure.

4. That the trial judge failed to instruct the jury that where on enters in possession of land by claiming title by deed, his possession by law will be deemed to be coexistent with the boundary stated in his deed.

Hammond vs. Ridgely, Lesse, 5 Harrison & Johnson 245.

5. That the trial judge failed to instruct the jury that when courses and distances conflict the whole description is to be considered to determine what is in conflict.

Sec. 99 of Tifany on Real Property

* * * * *

8. Page 4 of the instructions was improper in that no evidence was presented by the plaintiff to the Court to show that the stream had changed its course. There was no expert witness to substantiate a change in the river and there was no evidence before the Court to justify this instruction.

9. That if the first instruction was followed by the jury, a verdict would be brought for the defendants because of the physical location of the southernmost boundary of the river is the contention as to the natural boundary line.

* * * * *

11. That page 5 of instructions is not valid since there is no evidence before the Court to show that the Plaintiff in 1927 did plant any monuments at their property courses. Mr. Tyrie, a monument cutter, stated that 18 markers were purchased and he only assumed that the surveyor planted them on the 3.4 acres.

12. That page 6 of instructions failed to show that the evidence indicated that the plaintiff never went on this isolated parcel of land in dispute; that the character of the plaintiff's similar land was 100 acres for a home and the balance for farming; that in order to gain access to the parcel in dispute, the plaintiff would have to trespass upon the defendants' land or take a boat across the river from their own lands.

That the plaintiff did recognize that the evidence showed the defendants' right to the property was valid and did not make use of the

3.4 acres but merely enclosed the land by description in a deed for 266 acres.

13. That page 7 of the instructions failed to instruct the jury that there was no evidence to support any contentions by the plaintiff that timber was cut from the 3.4 acres.

14. That also in the instructions, page 7 failed to instruct the jury to consider the deed of right-of-way from the defendant to the Maryland Gas Transmission Corporation, dated September, 1930.

15. That page 7 of the instructions failed to show that the defendants paid taxes on this disputed land.

16. That page 7 of the instructions failed to show that the burden of proof is upon the plaintiff to show that the defendants or his predecessors did not use this parcel of land from 1927 to 1960.

* * * * *

18. That the court reporter, Mr. Underwood, is a member of the Plaintiff corporation which would place the transcript on appeal to the Court of Appeals of Maryland as having been transcribed by one of the Plaintiff's members.

19. That the Plaintiff's attorney, John Hessey, struck his appearance the day of the trial and then testified as the main witness for the plaintiff which prohibited the defendants from using the right to discover and this amounted to a fraud upon the defendants.

* * * * *

Kenneth T. Bosley,
Defendant

DEFENDANTS DEMAND FOR BILL OF PARTICULARS

The Defendants, KENNETH T. BOSLEY and PHYLLIS B. BOSLEY, his wife, demand the following particulars of the Plaintiff's claim:

1. State the date the Plaintiff would allege that it took possession of this property.

2. State what act or acts that might indicate possession that Plaintiff has performed during the time of alleged possession.

3. State the nature, type, extent and date of damages claimed in the case.

4. State the distance and direction this property is located from the Thornton Mill Road and the old County Road.

5. State what boundary markers are present and where these are located.

Kenneth T. Bosley
Phyllis B. Bosley

BILL OF PARTICULARS

And now comes the Plaintiff, The Grand Lodge of Ancient Free and Accepted Masons of Maryland, by John H. Hessey and Walter C. Mylander, Jr., its attorneys, and, in response to Defendants' Demand for Bill of Particulars, states:

1. That the Plaintiff took possession of the property described in the Declaration, pursuant to Deed to it from John B. Wailes and wife, dated June 30, 1927, which Deed is duly recorded among the Land Records of Baltimore County in Liber W.P.C. No. 645, Folio 333, &c. immediately upon the delivery of said Deed on or about the 30th day of June, 1927.

2. Immediately upon going into possession as aforesaid, the Plaintiff caused a survey of the said property to be made by J. Spence Howard, Registered Surveyor and Civil Engineer,

who planted monumental boundary stones along the outlines of the said property marked, respectively, No. 9, G.L.M., No. 8, G.L.M., No. 7, G.L.M., No. 6, G.L.M., No. 5, G.L.M., No. 4, G.L.M., No. 3, G.L.M., and No. 2, G.L.M. The Plaintiff has remained in continuous and exclusive possession of the said property from June 30, 1927, until March 8, 1965, when it was ejected by the Defendants.

3. The nature of the damages claimed in the case is (a) the destruction by the Defendants of the monumental boundary survey stones above mentioned, (b) the use and enjoyment of said premises by the Defendants, and (c) the value of timber cut by the Defendants and removed from the premises. The extent of the damages is the cost of replacing and restoring said markers, the value of the timber removed, and the re-establishment of vegetation on the said land. The date that the damages were incurred was March 8, 1965, on which date the property was bulldozed and the monumental markers were destroyed by the Defendants. The extent of the damages is Five Thousand Dollars ($5,000.00).

4. The property is located approximately seven-tenths (7/10ths) of a mile northwesterly from Thornton Mill Road and the old County Road known as Quaker Bottom Road.

5. There are no boundary markers to be found at the present time, all of the same having been destroyed by the Defendants as aforesaid.

John H. Hessey

Walter C. Mylander, Jr.

Attorneys for Plaintiff.

EXTRACT OF MOTION FOR DIRECTED VERDICT AT END OF PLAINTIFF'S CASE

(Mr. Bosley) Your Honor, at this point in the case I would like to make a motion for directed verdict.

* * * * * * *

They claim that they have paid taxes on the property, but they have not exclusively paid taxes on this particular parcel as identified as 3.4 acres. They have paid taxes including all of the property as being two hundred and sixty-six acres.

And at this point in the plaintiff's case they have not proved that they have a sufficient title of the 3.4 acres, because their lines do not coincide with the plaintiff's description which indicates that the natural boundary of the Western Run exists from plaintiff's title, I am sorry, from defendant's, from the plaintiff's title and the defendant's title, the boundary is between the two is the southernmost bank of the Western Run. The defendant's title was carved out of the plaintiff's title in 1850. In addition, the plaintiff's title only goes to the south side of the Western Run. There is nothing in this title to indicate that it crosses the Western Run in description. The plaintiffs have not presented a preponderance of evidence to indicate that they have the exclusive use of the property for adverse possession. They have not proved they have hostile possession of the property for the period of time, and they have completely disregarded the superior natural monument which is the flow of the water of the present Western Run as it now exists, and they have not even proven at all that there ever existed an old stream bed. Thank you, your Honor.

(The Court) Motion for directed verdict will be denied; bring in the jury (E.157).

APPENDIX AA

RENT RECEIPT FOR THORNTON MILL PROPERTY
1943 - 1948

Feb. 19, 19 43

Mr. Melvin Falbert

To Mrs. Anna M. Bosley Dr.

Terms March 1, 1943 until March 1, 1944

Rent received for one year for $5.00
lot on old mill property on
York Road and Thornton Mill
Roads

Received payment
Mrs. Anna M. Bosley

Received $5.00 Feb. 1944
Received $5.00 Feb. 11 1945

Received $5.00 Aug. 26 1948

(Printed Court of Appeal of Maryland Extract p. 34)

APPENDIX BB

EXTRACT OF SUMMARY OF WILLIAM G. ULRICH, JR.,
COUNTY SURVEYOR, FILED ON MAY 12, 1970

May 8, 1970

Judge, Third Judicial Circuit Court of Maryland
Towson, Maryland

Re: Summary of a Warrant of Resurvey

Dear Sir:

I have resurveyed and remarked the second parcel of that parcel of land that was conveyed by John B. Wailes and wife to the Grand Lodge of Ancient Free and Accepted Masons by a deed dated June 30, 1927 and recorded among the land records of Baltimore County in liber W.P.C. No. 645 folio 333 etc. * * * * *

I have also resurveyed and marked the tract of land by a deed dated October, 1959 and recorded among the aforesaid land records in liber W.J.R. No. 3616 folio 196 etc. conveyed by Anna M. Bosley and Webster Bosley her husband to Kenneth T. Bosley and Phyllis B. Bosley his wife. This tract of land makes a call to southernmost bank of the Western Run and binding on the meanders of the south and southwest side of said run to the beginning. The question arises as to where the call in said deed should bind, on the present southernmost bank of the Western Run as now existing or on the old streambed of Western Run as noted in said deed to the Grand Lodge heretofore mentioned.

In my resurvey at this present date, I cannot physically locate or ascertain the location of the old stream bed called for in the second parcel of the Grand Lodge heretofore mentioned. * * * * *

Very truly yours,

William G. Ulrich, Jr.
County Surveyor

APPENDIX CC

QUESTIONS PRESENTED TO COURT OF APPEALS OF MARYLAND

1. Should not the Lower Court have sustained the Demurrer to the Grand Lodge's Declaration?

2. Should not the Lower Court have granted the Special Plea Res Adjudicata of the Bosleys?

3. Plea of not guilty raises no question, except that the lower Court would not remove the March 8, 1965 date of alledged ejectment from the Court's instruction.

4. Should not the Lower Court have granted the Bosleys motion ne recipiatur and rejected the answer to the Petition for the Warrant of Resurvey and granted the Petition of Resurvey by a written order on the docket entries and in the proceedings?

5. Should not the Lower Court have granted the Exception of the Bosleys to the Instructions of the Court?

6. Should not the Lower Court have conducted the entire procedure under the directions of the Court and the examination of the Surveyor in a manner consistent with the trial of the ejectment proceeding and Article 91, Surveyor and pursuant to Maryland Rules under Sub-Title, T. Ejectment?

7. Should not the Lower Court have disqualified the Court Reporter for conflict of interest?

8. Should not the Lower Court have disqualified John H. Hessey, Sr., Esquire, as an attorney for the Grand Lodge in the proceedings after having been their witness?

9. Should not the Lower Court have conducted the entire proceedings and testimony in a manner consistent with the Law as to Surveyor and Surveying, Art. 91 of the Annotated Code of Maryland and Maryland Rules, Sub-Title T. Ejectment?

10. Should not the Lower Court have given instruction on the Rules of Surveying relating to courses and distance, calls for elder and junior surveys, and meander lines of water courses?

APPENDIX DD

EXTRACT OF OPINION OF THE COURT OF APPEAL OF MARYLAND

No. 13, September Term, 1971--Filed November 10, 1971

KENNETH T. BOSLEY, ET UX.

vs.

GRAND LODGE OF ANCIENT FREE AND ACCEPTED MASONS OF MARYLAND

Appeal from the Circuit Court for Baltimore County, Walter M. Jenifer, Judge.

Argued by Kenneth T. Bosley, in proper person, Sparks, Maryland; (Lewis C. Merryman, Towson, Maryland, on the brief) for appellants.

Argued by Charles C. W. Atwater; (Mylander & Atwater, on the brief), both of Baltimore, Maryland, for appellee.

Argued before HAMMOND, C. J.; BARNES, McWILLIAMS, FINAN, SINGLEY AND DIGGES, JJ.

Judgement affirmed.

BARNES, J.---

This appeal involves an action in ejectment filed in the Circuit Court for Baltimore County by the appellee, The Grand Lodge of Ancient Free and Accepted Masons of Maryland, a Maryland Corporation (Grand Lodge), against the appellants, Kenneth T. Bosley and Phyllis B. Bosley, his wife. The land involved is a 3.4 acre tract in the Eighth Election District of Baltimore County to which the Grand Lodge claims good record title.***

* * * * * * *

Grand Lodge has owned and used the property in Baltimore County known as "Bonnie Blink" for many years as a lodge home for elderly members and as a farm. It acquired Bonnie Blink by a

deed from John B. Wailes and wife, dated June 30, 1927, and duly recorded among the Land Records of Baltimore County in Liber W.P.C. No. 645, folio 333, etc., for 266.1 acres of land. The description in this deed is diveded into two parts--one for 262.7 acres, the other for 3.4 acres, the latter being the parcel involved in this case. The description was prepared in June 1927 by the late J. Spence Howard, a surveyor, and is based on a survey made by him.

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The Maryland Surveying and Engineering Company had purchased the records of J. Spence Howard from his estate. They were produced at the trial by James R. Cassell of the company.

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When asked if there was any evidence on the ground to indicate whether there had been an old stream bed as indicated by the Howard plat, Mr. Cassell testified that there was a depressed area that "could have been a stream bed that had been eroded and filled in." When asked his opinion in regard to how the change could have taken place between the "old stream bed" and the present location of the bed of Western Run, he stated that he was of the opinion that instead of a gradual erosion of the bank, Western Run "had cut right on through there rather than going around the long way, just flowed and made its own river bed stream, just cut off part of the loop going around it."

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Mr. Ulrich located the conflicting claims of the parties on the land and indicated these conflicting claims on his Warrant of Resurvey plat. He used the metes and bounds description of the Grand Lodge deed and plat to fix the location of stones 2 through 8. There was no metes and bounds description of the division line in the Bosley title, the call being to bind on the southerly side of Western Run.

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John H. Hessey, Sr., a member of the Maryland Bar for 57 years, had been associated with the Grand Lodge for more than 50 years. He was Master of his Lodge in 1927. He had been counsel for the Board of Bonnie Blink and for the Grand Lodge since 1935 and still is. He had custody of the Grand Lodge minute books and records. He was familiar with the circumstances surrounding the purchase of the property by the Grand Lodge in 1927.

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The Bosleys produced the testimony of Miss Katherine A. McIntyre, a member of the Maryland Bar, who identified the Webster-Matthews deed of November 11, 1850, as the deed out of the common owner of the land of the Grand Lodge and the Bosleys to the Bosley's predecessors in title. The description in this deed begins in the center of the York Turnpike, proceeds in a north-westerly direction and then calls "to the southernmost bank of Western Run, thence running with and bounding on the meanders of the south and the southwest side of the said Run to the beginning ...." No survey was made of the location of Western Run at that time. This is the division line which is in dispute between the parties on the question of legal record title.

Russell M. Herbert, a registered land surveyor, was also called as a witness for the Bosleys. Mr. Herbert had made a survey for the Bosleys in 1966 and prepared a plat, the lines of which follow the present line of Western Run. These lines were transposed to the Warrant of Resurvey plat prepared by Mr. Ulrich to which reference has already been made. Mr. Herbert stated that he did not see any old stream bed. In his opinion a natural monument would take precedence over an artificial monument provided they call within reasonalbe calls. Reasonable calls of distance would only apply if there were a conflict between a call to a natural monument and a call to an artificial monument. He saw

no evidence of former stream bed in 1960 when he was on the property, and he thought it was impossible for Western Run to have changed "that much" in the period of 1850 to 1960.

The jury found a verdict for the plaintiff, Grand Lodge, but awarded no damages.

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Mr. Cassell testified, in effect, that if the stream bed had changed from the location shown on the Howard plat, such a change would have been a violent cut which cut off part of the loop going around it. Mr. Ulrich also testified that the change in location of the stream bed may have been occasioned by a violent cut. This evidence, in our opinion, was sufficient to justify the submission by the lower court to the jury of whether there had been an avulsion, rather than a gradual erosion.

The rule is stated by Mr. Justice Brewer, speaking for the Supreme Court of the United States, in Nebraska vs. Iowa, 143 U.S. 359, 360-61, 12 S.Ct. 396, 397, 36 L.Ed. 186, 187-88 (1892), as follows.

"It is settled law that when grants of land border on running water, and the banks are changed by that gradual process known as 'accretion', the riparian owner's boundary line still remains the stream, although, during the years, by this accretion, the actual area of his possessions may vary***.

"It is equally well settled that where a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein. This sudden and rapid change of channel is termed, in the law, 'avulsion'."

See 2 W. Blackstone, Commentaries 262; Gould on Waters § 156 (2nd ed. 1891); 93 C.J.S. Waters

§§ 76, 79. See also Causey vs. Gray, 250 Md. 380, 387, 243 A.2d 575, 581 (1968).

The lower court correctly instructed the jury:

"The issue of fact (on the question of record title previously explained) for you to determine, therefore, is whether or not the stream known as Western Run between the year 1850 and the year 1927 changed its course. If you find that this stream did not change its course over these years, then the outlines of the property of the Defendants would include the parcel in dispute. If, however, you find that this stream did change its course from a former location to its present location and did so in a gradual manner by the natural process of erosion, the land in question would have been added to the land of the Defendants and their predecessors in title by what is known in the law as accretion and the boundaries of the property of Mr. and Mrs. Bosley would thereby have been extended to include said land and the present boundaries of their property would be the southernmost side of Western Run as it now exists. If, on the other hand, you find that this stream did change its course from a former location to its present location and did so in a sudden manner as the result of a flood thereby cutting it off from a larger tract of which it was a part, then, in that event, the parcel in dispute would not have been added to the property of the Defendants and title thereto would remain the Plaintiff, the Grand Lodge of Maryland."

The Bosleys on October 14, 1966, filed a special plea of res judicata in which they alleged that in the case of Atlantic Seaboard Pipeline Company vs. Grand Lodge of Maryland and Kenneth T. Bosley and Phyllis Bosley (as Intervenors), the United States District Court for the District of Maryland during the Spring Term, 1966, ordered that the boundary line be-

tween the property of Grand Lodge and the property of the Bosleys be stipulated as "the southernmost bank, a water course, as the common boundary," which is res judicata of the boundary line in the instant case. It was moved that the instant case be dismissed with costs to be paid by Grand Lodge. To this special plea, Grand Lodge filed a memorandum to which was attached a copy of the stipulation and a copy of the plat prepared by The Atlantic Seaboard Corporation showing the center line of the easement for the proposed gas pipeline. This plat shows the exact location where the right of way to be acquired coincided with the common boundary line of Grand Lodge and the Bosleys which was approximately 1,600 feet from the 3.4 acre tract. Judge Jenifer, after a hearing, filed an order dated November 21, 1967, that the special plea of res judicata be denied.

It is clear from the Atlantic Seaboard plat that the federal case involved a right of way over parcel 1 and not parcel 2 of the Grand Lodge land, and the location of the right of way is a substantial distance from the 3.4 acre tract. Indeed, that plat shows the 3.4 acre tract to be within the title line of Grand Lodge.

There being no identify of issues in the two cases, the federal case is not res judicata of the issues in regard to the lines in parcel 2, the 3.4 acre tract, so that the lower court properly denied the special plea of res judicata, Generally, there must be both identity of the parties and the subject matter in the prior case, as well as a final judgment rendered after the issue or question has been tried on the merits. DeMaio vs. Lumbermens Mutual Casualty Co., 247 Md. 30, 34, 230 a.2d 279, 281 (1967), and cases therein cited. See also Whitehurst vs. Rogers, 38 Md. 503, 514-15 (1873) and 1 Poe, Pleading and Practice 655, page 681 (5th ed. 1925). Inasmuch as there was no identity of

subject matter in the two cases, the doctrine of res judicata does not apply. Hence, it is unnecessary to decide whether the issues in the federal case were tried on their merits.

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Finally, the Bosleys raise a question, also not raised below, in connection with the alleged "conflict of interest" of the court reporter and of Mr. Hessey because of their membership in the Masonic order, in which order Mr. Bosley, himself, is a member. The point is also made that it is "fraud" for Mr. Hessey who has been counsel for the Grand Lodge to have testified in the case for the Grand Lodge.

There is an attempt by the Bosleys to show that the record in this case is not accurate in every detail so that the "charge" against the court reporter is without any foundation whatever.

The "charge" against Mr. Hessey is also without foundation. When Mr. Hessey -- who had initially signed the pleadings in the case as co-counsel -- realized that it would be necessary for him to testify, he withdrew his appearance as trial counsel, as the record indicates, and took no part in the trial of the case. His conduct was entirely proper.

As we have indicated, these questions were not raised by the Bosleys in the lower court and are not properly before us on appeal. Rule 885.

Judgment affirmed, the appellants to pay the costs.

ACT OF MARYLAND GENERAL ASSEMBLY - 1704

(BOUNDARIES SET UP BY "ON SIDE OF SUCH RUN" AND REQUIRING 20 ACRES)

At a Session of Assembly, begun and held at the Town and Port of Annapolis in Ann-Arundel County, the Fifth Day of September, in the Third Year of the Reign of our Sovereign Lady ANNE, by the Grace of God, of England, Scotland, France and Ireland, Queen, Defender of the Faith, &c. and in the Year of our Lord, One Thousand Seven Hundred and Four.

ACT OF 1704

AN ACT FOR THE ENCOURAGEMENT OF SUCH PERSONS AS WILL UNDERTAKE TO BUILD WATER-MILLS.

Daily Experience sheweth, that the Want of Water-Mills is the true cause that Husbandry in Tilling the Ground, and for Sowing of Wheat and Barely is but coldly prosecuted, tho' the Advantage thereby in raising Stock of neat Cattle, be great; and forasmuch as most Part of the Places fit for setting up of Water-Mills, are already in the Hands of Persons under Age, or unable to be at the Charge of building a Water-Mill or else such as are wilfully obstinate in forbiding and hindering such Persons as would purchase the said Places fit for building Water-Mills, and set them up, to the Increase of our Trade and Navigation, much to the publick Damage of this Province:

Be it Enacted, by the Queen's most Excellent Majesty, by and with the Advice and Consent of Her Majesty's Governour, Council and Assembly of this Province, and the Authority of the same, That if any Person or Persons, from and after the Publication hereof, shall desire to set up a Water Mill upon any Land next adjoyning to any Run of Water within this Province, not being the proper Possession or Freehold of such Person or Persons, nor leased to them, to the Intent thereon to set a Water Mill; they shall purchase a Writ of Chan-

cery directed to the Sheriff of the County where such Land lieth, requiring him by the Oath of Twelve Men of his Country, to enquire what Damage it would be to Her Majesty and others to have a Mill set up in such Place, as aforesaid. (Persons desiring to build Water-Mills may Purchase out of Chancery, a Writ of ad quod Damnum.)

ANNE, by the Grace of God, of England, Scotland, France and Ireland, Queen, Defender of the Faith, &c.
To the Sheriff of A------- County, Greeting,

WE Command you, that by the Oaths of Twelve honest and lawful Men, of the County, by whom the Truth of the Matter may be better known, You diligently enquire, if it be to the Damage of Us or others, if We gant N. N. of N. County, Twenty Acres of Land, lying at N. in the County aforesaid, viz. Ten Acres on one Side of Such Run, and Ten Acres on the other Side of Such Run of Water, together with Liberty to take, fall, cut down, and carry away, either by Land or Water, any Wood or Timber fit for building a Mill, other than Timber fit to Split into Clap-boards, upon any the Lands next adjoyning to the said Twenty Acres of Land, lying on each Side of the said Run of Water, at N. N. aforesaid, in the County aforesaid: .... (to grant any such Twenty Acres of Land fit to build a Water Mill upon, as aforesaid, together with free Egress and Regress to the said Water-Mill, either by Land, thro' any Man's Land next adjoyning, or else by Water; together with Liberty to fall any timber for building the said Water-Mill, other than Board-Timber, fit to cleave or split into Clap-boards, for any Time or Term not exceeding Eighty Years, then next to come, under the Yearly Rent of the Land then, by the Oath of Twelve Men, by Virtue of the Writ aforesaid returned, to be paid to the Owner of the said Land, so found and returned, as aforesaid: Which said Grant from Her Majesty, Her said Heirs and Successors, or from the Governour here, for the Time being, as aforesaid, shall be good and available in Law to the Grantee, as aforesaid, for any Term of Years not exceeding Eighty Years, as aforesaid, against all Persons whatsoever; any Law, Custom or Usage heretofore had, made or used within this Province to the contrary, notwithstanding.